

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHYLLIS JEAN MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45827

FILED

JUL 06 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying appellant Phyllis Jean Miller's motion to correct an illegal sentence. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On November 23, 1994, Miller was convicted, pursuant to a jury verdict, of aiding and abetting in the crime of first-degree murder with the use of a deadly weapon. Miller was sentenced to serve two consecutive prison terms of life without the possibility of parole. This court dismissed Miller's direct appeal from the judgment of conviction and sentence.¹ Miller filed a timely post-conviction petition for a writ of habeas corpus which was denied by the district court. This court dismissed Miller's appeal from the denial of her habeas petition.²

On May 12, 2004, Miller filed a motion to correct an illegal sentence in the district court. The State opposed the motion. The district

¹Miller v. State, Docket No. 26759 (Order Dismissing Appeal, June 24, 1996).

²Miller v. State, Docket No. 30907 (Order Dismissing Appeal, January 25, 2000).

court conducted a hearing, and on July 29, 2005, entered an order denying Miller's motion. This timely appeal followed.

Miller contends that the district court erred in denying her motion to correct an illegal sentence. Specifically, Miller argues that she "was not convicted of the crime of Murder but convicted of 'Aiding and Abetting in the crime of Murder' which is a theory of culpability and not [an] actual crime." Essentially, Miller claims that the charging document, the criminal information, confused the jury. We conclude that Miller is not entitled to any relief.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence: either the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory maximum.³ "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"⁴ A motion to correct an illegal sentence that raises issues outside the very narrow scope of issues permissible should be summarily denied.⁵

The arguments raised by Miller in her motion fall outside the scope of issues permissible in a motion to correct an illegal sentence. Miller's sentence was facially legal, and there is no indication that the

³Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

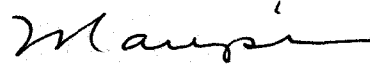
⁴Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁵Id. at 708-09 n.2, 918 P.2d at 325 n.2.

district court was without jurisdiction.⁶ The district court should have denied Miller's motion on this basis alone. Nevertheless, the district court also considered the merits and denied Miller's motion. We conclude that the district court did not err. The district court found that the criminal information sufficiently provided Miller, without confusion, with notice of the State's allegations. Moreover, on appeal, Miller does not argue that she was not given sufficient notice of the aiding and abetting theory. And finally, we note that Miller's challenge to the sufficiency of the evidence with regard to aiding and abetting was rejected on direct appeal, and that she also unsuccessfully raised arguments related to the alleged deficiency of the criminal information in her post-conviction petition.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



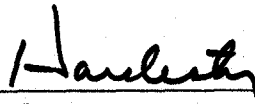
Maupin

J.



Gibbons

J.



Hardesty

J.

⁶See NRS 193.165; NRS 195.020; NRS 200.010; NRS 200.030.

cc: Hon. Connie J. Steinheimer, District Judge
Christopher R. Oram
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk